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10 **BEFORE THE**  
**PHYSICAL THERAPY BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1D-2002-63291

13 MARY M. BRKICH, P.T.A.  
14 4691 Albany Circle, #131  
San Jose, CA 95029

OAH No. 2003020204

15 Physical Therapist Assistant  
16 License No. AT 3840

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17 Respondent.  
18 \_\_\_\_\_  
19

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
21 above-entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical  
24 Therapy Board of California. He brought this action solely in his official capacity and is  
25 represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
26 Thomas P. Reilly, Deputy Attorney General.

27 2. Respondent Mary M. Brkich (Respondent) is represented in this  
^^ proceeding by attorney Robert J. Sullivan, Esq., whose address is Nossaman, Guthner, Knox &

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2 Elliott, LLP, 915 L Street, Suite 1000, Sacramento, CA 95814-3701.

3           3.       On May 8, 1995, the Physical Therapy Board of California issued Physical  
4 Therapy Assistant License Number AT 3840 to Mary M. Brkich (Respondent). The license was  
5 in full force and effect at all times relevant to the charges brought in Accusation No.  
6 1D-2002-63291 and will expire on December 31, 2004, unless renewed.

7                               JURISDICTION

8           4.       Accusation No. 1D-2002-63291 was filed before the Physical Therapy  
9 Board of California (Board), Department of Consumer Affairs, and is currently pending against  
10 Respondent. The Accusation and all other statutorily required documents were properly served  
11 on Respondent on January 21, 2003. Respondent timely filed her Notice of Defense contesting  
12 the Accusation. A copy of Accusation No. 1D-2002-63291 is attached as Exhibit A and  
13 incorporated herein by reference.

14                               ADVISEMENT AND WAIVERS

15           5.       Respondent has carefully read, fully discussed with counsel, and  
16 understands the charges and allegations in Accusation No. 1D-2002-63291. Respondent has also  
17 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
18 Settlement and Disciplinary Order.

19           6.       Respondent is fully aware of her legal rights in this matter, including the  
20 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
21 counsel at her own expense; the right to confront and cross-examine the witnesses against her;  
22 the right to present evidence and to testify on her own behalf; the right to the issuance of  
23 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
24 reconsideration and court review of an adverse decision; and all other rights accorded by the  
25 California Administrative Procedure Act and other applicable laws.

26           7.       Respondent voluntarily, knowingly, and intelligently waives and gives up  
27 each and every right set forth above.

28                               SETTLEMENT OF DISPUTED CLAIMS

8. The parties desire to reach a final settlement of this matter in order to avoid the time, expense and uncertainty of litigation. It is agreed that any and all admissions here are limited to this proceeding only and any subsequent proceeding between the parties. The admissions herein shall otherwise be null and void, and in no event admissible in any criminal, civil or administrative proceeding.

CULPABILITY

9 Respondent admits there is an evidentiary basis to discipline her license  
for violation of Business and Professions Code section 2264Baiding and abetting the unlicensed  
practice of medicine. Respondent denies all other allegations of the Accusation.

10. Respondent agrees that her Physical Therapy Assistant License Number AT 3840 is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

11. This stipulation shall be subject to approval by the Physical Therapy Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Physical Therapy Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties

1  
2 agree that the Board may, without further notice or formal proceeding, issue and enter the  
3 following Disciplinary Order:  
4

5 **DISCIPLINARY ORDER**

6 IT IS HEREBY ORDERED that Physical Therapist Assistant License No. AT  
7 3840 issued to Respondent Mary M. Brkich is revoked. However, the revocation is stayed and  
8 Respondent is placed on probation for 3 years on the following terms and conditions.

9 Respondent has signed a stipulated agreement with the Physician Assistant  
10 Committee of the Medical Board of California by which she agrees to a probation of three years  
11 and certain other terms and conditions. A copy of that stipulated agreement is attached as  
12 Exhibit B and is incorporated here by reference. It is the intent of this stipulation that the  
13 Physician Assistant Committee shall monitor Respondent's probation and, upon completion of  
14 that probation, her license as a Physical Therapist Assistant shall be restored. Any violation of  
15 the probationary order imposed by the Physician Assistant Committee shall also constitute a  
16 violation of probation under this order. In addition, Respondent agrees to the following terms  
17 and conditions of this probation:

18 1. **LICENSE SUSPENSION** As part of probation, Respondent's license  
19 shall be suspended for fourteen (14) days, this suspension to run concurrently with the  
20 suspension imposed by the Physician Assistant Committee.

21 2. **COST RECOVERY** The respondent is ordered to reimburse the Board  
22 the actual and reasonable investigative and prosecutorial costs incurred by the Board. Those  
23 costs amount to \$2,912.00. However, if respondent makes reimbursement in the amount of  
24 \$1,456.00 within 30 days from the effective date of the decision, the Board agrees to accept this  
25 as full reimbursement. Failure to make the ordered reimbursement, or any agreed upon payment,  
26 may constitute a violation of the probation order.

27 3. **RESTRICTION OF PRACTICE - MONITORING** During probation,  
28 Respondent shall not perform physical therapy in association with Arthur Ting, M.D. During

1  
2 probation, respondent shall not perform physical therapy unless and until she has submitted to  
3 the Board or its designee for its prior approval a plan of practice in which respondent's practice  
4 shall be monitored by a physical therapist, licensed to practice in the State of California, who  
5 shall provide periodic reports to the Board or its designee.

6 4. If the monitor resigns or is no longer available, respondent shall, within 10  
7 days, move to have a new monitor appointed, through nomination by respondent and approval by  
8 the Board or its designee.

9 5. PROBATION MONITORING PROGRAM COMPLIANCE In the event  
10 respondent undertakes to perform physical therapy during her term of probation, she shall enroll  
11 in and comply with the Board=s probation monitoring program and shall reimburse the Board  
12 for all probation monito ring costs, which shall be billed quarterly. Failure to make the ordered  
13 reimbursement within 60 days of the billing shall constitute a violation of the probation order. In  
14 the event respondent becomes subject to this provision, she shall submit quarterly declarations  
15 under penalty of perjury on forms provided by the Board, stating whether there has been  
16 compliance with all the conditions of probation. In the event respondent becomes subject to this  
17 provision, she shall also be subject to the Board=s standard probation conditions pertaining to  
18 work of less than 20 hours per week and tolling of probation (paragraphs N and O of the  
19 standard conditions as set forth in the Board=s Disciplinary Guidelines, published September  
20 1998, at page 18).

21 6. NOTIFICATION OF CHANGE OF NAME OR ADDRESS The  
22 respondent shall notify the Board, in writing, of any and all changes of name or address within  
23 ten (10) days.

24 7. RESTRICTION OF PRACTICE - TEMPORARY SERVICES  
25 AGENCIES During probation, respondent shall not work for a temporary services agency or  
26 registry.

27 8. PROHIBITED USE OF ALIASES Respondent may not use aliases and  
^^ shall be prohibited from using any name which is not her legally-recognized name or based upon

1  
2 a legal change of name.

3           9.     VIOLATION OF PROBATION If respondent violates probation in any  
4 respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke  
5 probation and carry out the disciplinary order that was stayed. If an accusation or petition to  
6 revoke probation is filed against respondent during probation, the Board shall have continuing  
7 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
8 is final.

9           10.    CESSATION OF PRACTICE DUE TO RETIREMENT, HEALTH OR  
10 OTHER REASONS Following the effective date of this probation, if respondent ceases  
11 performing physical therapy due to retirement, health or other reasons, respondent may request  
12 to surrender her license to the Board. The Board reserves the right to evaluate the respondent's  
13 request and to exercise its discretion whether to grant the request or to take any other action  
14 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the  
15 tendered license, the terms and conditions of probation shall be tolled until such time as the  
16 license is no longer renewable, the respondent makes application for the renewal of the tendered  
17 license or makes application for a new license.

18           11.    COMPLETION OF PROBATION Upon successful completion of  
19 probation, respondent's license or approval shall be fully restored.

20           12.    WRITTEN EXAM ON THE LAWS & REGULATIONS GOVERNING  
21 THE PRACTICE OF PHYSICAL THERAPY Within 90 days of the effective date of this  
22 decision, respondent shall take and pass the Board's written examination on the laws and  
23 regulations governing the practice of physical therapy in California. If respondent fails to pass  
24 the examination, respondent shall be suspended from the practice of physical therapy until a  
25 repeat examination has been successfully passed.

26           13.    PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE  
27 ON PROBATION It is not contrary to the public interest for the respondent to perform physical  
therapy under the probationary conditions specified in the disciplinary order.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert J. Sullivan, Esq.. I understand the stipulation and the effect it will have on my Physical Therapist Assistant License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board of California.

DATED: 08/22/03.

Original Signed By:  
MARY M. BRKICH  
Respondent

I have read and fully discussed with Respondent Mary M. Brkich the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 08/22/03.

Original Signed By:  
ROBERT J. SULLIVAN, ESQ.  
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physical Therapy Board of California of the Department of Consumer Affairs.

DATED: 08/27/03.  
BILL LOCKYER, Attorney General  
of the State of California  
VIVIEN H. HARA  
Supervising Deputy Attorney General

Original Signed By:  
THOMAS P. REILLY  
Deputy Attorney General  
Attorneys for Complainant



**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
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MARY M. BRKICH, P.T.A.  
4691 Albany Circle, #131  
San Jose, CA 95029

OAH No. 2003020204

Physical Therapy Assistant  
License No. AT 3840

Respondent.

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**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 31, 20003.

It is so ORDERED October 1, 2003.

Original Signed By: Ellen Wilson, PT  
FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS

**Exhibit A**  
**Accusation No. 1D-2002-63291**

